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ROBERTS, MARDULA & WERTHEIM, LLC
11800 SUNRISE VALLEY DRIVE
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RESTON VA 20191

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OFFICE OF PETITIONS

In re Application of	:	
Burns, et al.	:	
Application No. 09/491,919	:	ON PETITION
Filed: January 27, 2000	:	
Attorney Docket No. 2391-002	:	
For: SYSTEM AND METHOD FOR EMAIL SCREENING	:	

This is a decision on the petition under 37 CFR 1.181, filed April 19, 2007, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to seek court review of the Board of Patent Appeals and Interferences Decision on Appeal within two months of the November 30, 2006 decision. No claims were allowed. The Office contended this application became abandoned on January 31, 2007.

A Notice of Abandonment was mailed on April 18, 2007.

Petitioners argue that the application did not become abandoned because a Request for Rehearing was filed on January 23, 2007, which was within the two month period for action.

37 CFR 41.52 (a)(1) states, "Appellant may file a single request for rehearing within two months of the date of the original decision of the Board."

However, the Office had no record of receiving the January 23, 2007 Request for Rehearing.

Petitioners have provided a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination date stamp, citing January 23, 2007 as the date of receipt, affixed thereto. The postcard lists, *inter alia*, that the filing included a Request for Rehearing under 37 CFR 41.52

The return postcard constitutes *prima facie* evidence that the items listed thereon were received in the Office on January 23, 2007. MPEP 503.

In addition, petitioners filed the correspondence in compliance with 37 CFR 1.10. Petitioners submitted a copy of Express Mail label no. EV955981497US showing a date-in of 1/23 and a USPS date stamp of JAN 23 2007. The same Express Mail label number is found on the copy of the Request for Rehearing submitted with the present petition. Attorney Christopher B. Kilner states that the papers submitted with the instant petition are copies of the original correspondence.

Paragraph (e) of 37 CFR 1.10 states that:

Any person mailing correspondence addressed as set out in 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Director to consider such correspondence as filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label, MPEP 513. That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the

correspondence, including a Request for Rehearing under 37 CFR 41.52, was deposited as "Express Mail" with the U.S. Postal Service on January 23, 2007.

Accordingly, the petition under 37 CFR 1.181 is granted, the holding of abandonment is withdrawn, and the April 18, 2007 Notice of Abandonment is vacated. No petition fee has been or will be charged in connection with this matter.

After the mailing of this decision, the application file will be returned to the Board of Patent Appeals and Interferences for consideration of the Request for Rehearing under 37 CFR 41.52, filed January 23, 2007.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

A handwritten signature in cursive script, reading "Shirene Willis Brantley".

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy